

BEFORE THE  
COMMISSION ON STATE MANDATES  
STATE OF CALIFORNIA

RECONSIDERATION OF PRIOR DECISION  
ON:

Education Code Sections 60607, subdivision (a),  
60609, 60615, 60630, 60640, 60641, and 60643,  
as amended by Statutes of 1997, Chapter 828;

Title 5, California Code of Regulations, Sections  
850-874; and

Directed by Statutes 2004, Chapter 895, Section  
19 (Assem. Bill No. 2855),

Effective January 1, 2005.

Case No.: 04-RL-9723-01

*Standardized Testing and Reporting*

REBUTTAL BRIEF RE: NOTICE OF  
RECONSIDERATION

HEARING DATE: May 26, 2005

**REBUTTAL BRIEF**

Statutes 2004, Chapter 895, Section 19 (Assem. Bill No. 2855), directs the Commission on State Mandates (CSM) to reconsider the prior final decision in Standardized Testing and Reporting (STAR) Program mandate, as follows: Notwithstanding any other law, the Commission on State Mandates shall, on or before December 31, 2005, reconsider its decision in 97-TC-23, relating to the Standardized Testing and Reporting (STAR) mandate, and its parameters and guidelines for calculating the state reimbursement for that mandate pursuant to Section 6 of Article XIII B of the California Constitution for each of the following statutes in light of federal statutes enacted and state court decisions rendered since these statutes were enacted: (a) Chapter 975 of the Statutes of 1995. (b) Chapter 828 of the Statutes of 1997. (c) Chapter 722 of the Statutes of 2001. (d) Chapter 576 of the Statutes of 2000. Commission staff requests that the parties file simultaneous opening briefs and rebuttal comments on three issues.

## ISSUES

A. *Is there a new program or higher level of service?*

The Department of Finance contends in their letter dated February 24, 2005, “The NCLB replaced the IASA in 2002, and required states to develop a system of assessments that meet specific criteria.” In Hayes v. Commission On State Mandates the court stated “If the state freely chose to impose the costs upon as a means of implementing a federal program then the costs are the result of a reimbursable state mandate regardless whether the costs were imposed by the state by the federal government.” The state implemented NCLB by freely choosing to impose new programs or higher levels of service upon local districts resulting in the cost of programs or higher level of service being subject to subvention.

The *Hayes* court dismissed the same argument raised by the Department of Finance when stating, “The state could not avoid its subvention responsibility by pleading “federal mandate” because the federal statute does not require the state to impose the costs of such hearings upon local agencies. Thus, the burden is imposed by a state rather than federal mandate.” Furthermore, the fact that NCLB extends to all schools and is not limited to the former IASA Title I sites is a requirement of the state not the local districts. As a result, the Commission’s unanimous decision that STAR was a “program” within the meaning of section 6, article XIII B of the California Constitution must not be changed.

*Have funds been appropriated for this program (e.g., state budget) or are there any other sources of funding available? If so, what is the source?*

State funds are appropriated from the General Fund for STAR. However, no funds have been appropriated by Chapter 828/97 for reimbursement of mandated cost claims in excess of the amount provided by the state. When state funds are appropriated for STAR in the General Fund the amount is a

setoff for districts filing reimbursement claims. The state funds currently appropriated fall dramatically short in relation to the costs incurred by school districts throughout the state and there is no requirement for future funding for STAR from the General Fund. Furthermore, there is no basis to the argument Title I funds be considered as offsetting revenue.


C. *What is the period of reimbursement for the commission's decision on reconsideration?*

The period of reimbursement under consideration shall be prospectively from the date of the statement of decision.

#### CERTIFICATION

I certify by my signature below that the statements made in this document are true and correct of my own knowledge, and as to all other matters, I believe them to be true and correct based upon information and belief.

Executed on March 10, 2005, at San Diego, California, by:

  
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Art Paikowitz, Office of Resource Development  
San Diego Unified School District